

FILE

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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STEVEN PLOSKI,
Plaintiff,
-against-

ANSWER

ANDREW PELLEGRINI INDIVIDUALLY,
ANDREW PELLEGRINI IN HIS OFFICIAL
CAPACITY, JOHN TWOMEY INDIVIDUALLY,
JOHN TWOMEY IN HIS OFFICIAL CAPACITY,
THE CITY OF YONKERS AND THE YONKERS
POLICE DEPARTMENT,

Index No. 08 Civ. 0077 (WCC)

Defendants.

-----X

Defendants, ANDREW PELLEGRINI, JOHN TWOMEY, THE CITY OF
YONKERS and THE YONKERS POLICE DEPARTMENT by their attorney, FRANK J.
RUBINO, Corporation Counsel of the City of Yonkers, as and for its Answer to the
Complaint respectfully allege as follows:

FIRST: Deny the allegation set forth in paragraph "1" of the Complaint; except
those portions containing conclusions of law which accordingly require no response; and
except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the
truth of any of the allegations set forth in the paragraph designated "2" of the Complaint

and respectfully refers all questions of law to the Court except admit that plaintiff purports to proceed as stated therein.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "3", "8", "9", "10", "16", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "32", "34", "37", "38", "43", "44", "45", "46", "47", "48", "49", "50", "51", "60", "67", "71", "72", "73", "74", "95", "96", "97", "99", "102", "103", "104", "105", "106", "107", "108" and "109" of the Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "4", "5", "6", "7", "11", "53", "63", "64", "65", "66", "70", "100" and "101" of the Complaint and respectfully refers all questions of law to the Court.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "13" of the Complaint; except admit that Plaintiff purports to proceed as stated therein.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "18", "31", "33", "35", "52", "54", "55", "56", "57", "58", "59", "61", "62", "68", "69", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94" and "98" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "36", "39", "40", "41" and "42" of the Complaint.

ANSWERING COUNT ONE

EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "110" of the Complaint with the same force and effect as though fully set forth herein at length.

NINTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "111", "112", "113", "114", "115", "116", "118" and "119" of the Complaint and respectfully refers all questions of law to the Court.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "117" of the Complaint and respectfully refers all questions of law to the Court; except admit that plaintiff purports to proceed as stated therein.

ANSWERING COUNT TWO

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "120" of the Complaint with the same force and effect as though fully set forth herein at length.

TWELVTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "121", "122" "123", "124", "125", "126", "127", "128", "130", "131", "132" and "136" of the Complaint and respectfully refers all questions of law to the Court.

THIRTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "129" and "137" of the Complaint

and respectfully refers all questions of law to the Court; except admit that plaintiff purports to proceed as stated therein.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "134" and "135" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING COUNT THREE

FIFTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "138" of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "139", "141", "142", "143", "144", "145" and "146" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "140" of the Complaint.

EIGHTEENTH: Deny all allegations in the "Wherefore" portion of the Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

NINETEENTH: That if any physical force was used to effect the arrest of the plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A SECOND DEFENSE:

TWENTIETH: That the plaintiff's arrest was not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the plaintiff guilty of a criminal act and in arresting and prosecuting the plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A THIRD DEFENSE:

TWENTY-FIRST: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A FOURTH DEFENSE:

TWENTY-SECOND: At all times relevant to the Complaint, defendants have been in compliance with all requirements under the laws cited by the Complaint.

AS AND FOR A FIFTH DEFENSE:

TWENTY-THIRD: Injuries and damages to the plaintiff were caused or were contributed to by the culpable conduct and want of care on the part of plaintiff.

AS AND FOR A SIXTH DEFENSE:

TWENTY-FOURTH: The individual defendants are entitled to the defense of qualified immunity.

AS AND FOR A SEVENTH DEFENSE:

TWENTY-FIFTH: This action is barred by the applicable statutes governing the commencement of actions.

AS AND FOR A EIGHTH DEFENSE:

TWENTY-SIXTH: Defendant City of Yonkers Police Department is improperly sued in this action when the Police Department is merely a department of the City of Yonkers.

AS AND FOR A NINTH DEFENSE:

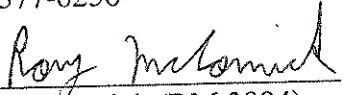
TWENTY-SEVENTH: The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants request judgment dismissing the Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: May 6, 2008
Yonkers, New York

Yours, etc.,
FRANK J. RUBINO
Corporation Counsel
Attorney for Defendant
THE CITY OF YONKERS
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6256

By:


Rory McCormick (RM 3994)
Associate Corporation Counsel

TO: John A. Raimondo, P.C.
Attorney for Plaintiff
399 Knollwood Road, Suite 303
White Plains, New York 10603

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2008 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

John A. Raimondo, P.C.
Attorney for Plaintiff
399 Knollwood Road, Suite 303
White Plains, New York 10603

Dated: May 6, 2008
Yonkers, New York

Rory McCormick
Rory McCormick